

Amendment No. 4 to HB1877

**Fitzhugh
Signature of Sponsor**

FILED

Date _____

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1265*

House Bill No. 1877

by deleting all language after the enacting clause and replacing it with the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 5

is amended by deleting the part in its entirety and by substituting instead the following:

Section 39-14-501. As used in this part, unless the context otherwise requires:

(1) "Commercial Purpose" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of the entity;

(2) "Garbage" includes putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food;

(3) "Litter" includes garbage, refuse, rubbish and all other waste material, including a tobacco product as defined in § 39-17-1503(9) and any other item primarily designed to hold or filter a tobacco product while the tobacco is being smoked;

(4) "Refuse" includes all putrescible and nonputrescible solid waste; and

(5) "Rubbish" includes nonputrescible solid waste consisting of both combustible and non-combustible waste.

Section 39-14-502.

(a) A person commits littering who:

(1) Knowingly places, drops or throws litter on any public or private property without permission and does not immediately remove it;

(2) Negligently places or throws glass or other dangerous

substances on or adjacent to water to which the public has access for swimming or wading, or on or within fifty feet (50') of a public highway; or

(3) Negligently discharges sewage, minerals, oil products or litter into any public waters or lakes within this state.

(b) Whenever litter is placed, dropped, or thrown from any motor vehicle, boat, airplane, or other conveyance in violation of this section, the trier of fact may, in its discretion and in consideration of the totality of the circumstances, infer that the operator of the conveyance has committed littering.

(c) Whenever litter discovered on public or private property is found to contain any article or articles, including but not limited to letters, bills, publications, or other writings that display the name of a person thereon in such a manner as to indicate that the article belongs or belonged to such person, the trier of fact may, in its discretion and in consideration of the totality of the circumstances, infer that such person has committed littering.

Section 39-14-503.

(a) Mitigated criminal littering is littering in an amount less than or equal to five pounds (5 lbs.) in weight or seven and one-half (7.5) cubic feet in volume.

(b) Mitigated criminal littering is a Class C misdemeanor punishable by a fine of fifty dollars (\$50.00) and as provided in subsections (c) and (d).

(c) A person charged with a violation of this section may, in lieu of appearance in court, submit the applicable fifty dollar (\$50.00) fine to the clerk of the court that has jurisdiction of such offense within the county in which the offense charged is alleged to have been committed. A person paying in this manner is not subject to the provisions of subsection (d), and, in the discretion of the judge, may be excused from paying court costs for the offense.

(d) In addition to the penalties established in this section, the court shall

require a person convicted under this part to remove litter from the state or local highway system, public playgrounds, public parks or other appropriate public locations for not more than forty (40) hours. The court, in its discretion, may also require a person convicted under this section to work in a recycling center or other appropriate location for any stated period of time not to exceed eight (8) hours.

Section 39-14-504.

(a) Criminal littering is littering in an amount more than five pounds (5 lbs.) in weight or seven and one-half (7.5) cubic feet in volume and less than or equal to ten pounds (10 lbs.) in weight or fifteen (15) cubic feet in volume.

(b) Criminal littering is a Class B misdemeanor.

(c) In addition to the penalties established in this section, the court shall require a person convicted under this part to remove litter from the state or local highway system, public playgrounds, public parks or other appropriate public locations for not more than eighty (80) hours. The court, in its discretion, may also require a person convicted under this section to work in a recycling center or other appropriate location for any stated period of time not to exceed eight (8) hours.

Section 39-14-505.

(a) Aggravated criminal littering is littering:

(1) In an amount exceeding ten pounds (10 lbs.) in weight or fifteen (15) cubic feet in volume; or

(2) In any amount for any commercial purpose.

(b) Aggravated criminal littering is a Class A misdemeanor, except in the following circumstances, in which case it is a Class E felony:

(1) Upon the third conviction in any amount exceeding ten pounds (10 lbs.) in weight or fifteen (15) cubic feet in volume; or

(2) Upon the second conviction in any amount exceeding one thousand (1000 lbs.) in weight or two hundred (200) cubic feet in

volume or in any amount for any commercial purpose.

(c) In addition to the penalties established in this section, the court shall require a person convicted under subsection (a) to remove litter from the state or local highway system, public playgrounds, public parks or other appropriate public locations for not more than one hundred and sixty (160) hours. The court, in its discretion, may also require a person convicted under this section to work in a recycling center or other appropriate location for any stated period of time not to exceed eight (8) hours.

Section 39-14-506.

In addition to the penalties established in this part, the court may, in its discretion, require a person convicted under this part to remove any substance listed under § 39-14-501 that was dropped, placed or discharged by the person and restore the property or waters damaged by the littering to its former condition at the person's expense.

Section 39-14-507.

(a)

(1) Any motor vehicle, which transports litter, as defined in § 39-14-501, or any material likely to fall or be blown off onto the highways, shall be required to have such material either in an enclosed space or fully covered by a tarpaulin.

(2) If such motor vehicle is a non-commercial, not-for-hire pickup truck, the provisions of this subsection (a) shall be construed to be complied with if the material on such non-commercial, not-for-hire pickup truck is secured in such a way as to reasonably ensure it will not fall or be blown off the vehicle.

(3) All other pickup trucks and other motor vehicles are required to comply with the provisions of subdivision (a)(1).

(4) Any motor vehicle having a gross weight of less than sixteen

thousand pounds (16,000 lbs.) which is transporting litter, as defined in § 39-14- 501, to an energy recovery facility, as defined in § 68-211-501(2), shall be required to have such material in an enclosed space, unless it is a motor vehicle with a factory installed hydraulic lift system that lifts the entire bed of the truck.

(5) The provisions of this subsection (a) do not apply to motor vehicles transporting recovered materials to a convenience center or scrap dealer for recycling.

(6) The provisions of this section shall not apply to motor vehicles which transport crushed stone, fill dirt and rock, soil, bulk sand, coal, phosphate muck, asphalt, concrete, other building materials, forest products, unfinished lumber, agricultural lime and agricultural products, and which are loaded in compliance with the four inch (4") requirement of § 55-7-109. Such exemption shall not apply to any load if any law enforcement officer sees any part of such material blowing off such vehicle. The provisions of this section shall also not apply to motor vehicles that transport farm produce going to market, or from field to field, or from field to storage.

(b) A violation of this section is a Class B misdemeanor. In addition to the penalties for a Class B misdemeanor, the court may, in its discretion, impose any of the penalties set forth in § 39-14-503(d).

Section 39-14-508.

(a) County legislative bodies may, by resolution, impose regulations for litter control, including the placing, dropping, throwing, collection and storage of garbage, litter, refuse and rubbish on public or private property. The definitions pursuant to § 39-14-501 for commercial purposes, garbage, litter, refuse, and rubbish may be included by reference in any such resolution. The county legislative body is authorized to include in the resolution that a violation occurs if

a person:

(1) Knowingly places, drops or throws litter on any public or private property without permission and does not immediately remove it; or

(2) Negligently places or throws glass, litter or other dangerous substances on or adjacent to water to which the public has access for swimming or wading, or on or within fifty feet (50') of a public highway. Such regulations shall be at least as stringent as the provisions of this part.

(b)

(1) The regulations promulgated in accordance with the provisions of subsection (a) may grant authority for the county to require property owners to conform their property to the regulations by removal of garbage, litter, refuse or rubbish. The county shall send a statement to the owner itemizing the cost of the removal. If the owner fails to reimburse the county for the cost of the removal within sixty (60) days, the statement shall constitute a lien upon the property. The statement shall constitute a lien upon the property as of the date the notice is filed and shall have priority from the date of the filing of notice, but shall not affect, or have priority over, any valid lien, right, or interest in the property duly recorded, or duly perfected by filing, prior to the filing of the notice and shall not have priority over any real estate tax liens, whether attaching on the property before or after the filing of the notice.

(2) If such property owner is aggrieved by the amount of the lien filed, such owner may submit the matter to the chancery court of the county in which the property is located to determine the appropriate amount of the lien. A decision of that court may be appealed according to

the Tennessee Rules of Appellate Procedure.

(3) The lien provided in this section shall be entered in the records of the register of deeds of the county in which the property lies. Such lien shall be satisfied to the extent of the value of the consideration received at the time of the transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien upon the property until it is fully satisfied.

(c) Each resolution adopted in accordance with subsection (a), or the caption and a complete summary of the resolution, shall be published after its final passage in a newspaper of general circulation in the county. No such resolution shall take effect until the publication.

(d) Any violation of the provisions or regulations adopted pursuant to subsection (a) shall be punished by imposing a monetary penalty in accordance with the provisions of § 5-1-121.

(e) No provision in this section shall be construed as applying to any activity regulated pursuant to title 68, chapters 211 or 212 or title 69, chapter 3. Section 39-14-509.

All law enforcement agencies, officers, and officials of this state or any political subdivision thereof or any enforcement agency, officer, or any official of any commission or authority of this state or any political subdivision thereof is authorized, empowered, and directed to enforce compliance with this part. Section 39-14-510.

(a) All proceeds from the fines imposed by this part shall be deposited in the general fund of the county where the offense occurred and designated for county operating costs with preference given to litter prevention programs and education such as those conducted by Keep America Beautiful.

(b) Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for mitigated criminal

littering shall receive a reward of fifty dollars (\$50.00). Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for criminal littering or aggravated criminal littering shall receive a reward of two hundred and fifty dollars (\$250). The county where the offense occurred shall provide the reward money from the proceeds of the mandatory fines collected under the provisions of this section.

Section 39-14-511.

In counties with an environmental court designated pursuant to Chapter 426 of the Public Acts of 1991, such courts shall exercise exclusive general sessions jurisdiction, pursuant to title 40, over this part.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.